

Service Date: April 28, 2004

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Application of)	UTILITY DIVISION
NorthWestern Energy for Approval of)	
Agreement for Sale and Purchase of Capacity)	DOCKET NO. D2004.3.45
and Energy between NorthWestern Energy)	ORDER NO. 6557
and Basin Creek Equity Partners, LLC)	

PROCEDURAL ORDER

NOTE: Please read carefully. Provisions of this order may be different from previous PSC procedural orders due to the special circumstances of these dockets. This is not a proposed order. Parties may by motion request changes to this order.

Introduction

1. In this order the Montana Public Service Commission (Commission or PSC) establishes a procedural schedule and procedural requirements for this docket, and responds to NorthWestern Energy's request to treat the filing as if it were made pursuant to § 69-8-421, MCA. On March 23, 2004 NorthWestern Energy (NWE) filed an application with the Commission asking that it make certain findings on a power supply agreement between NWE and Basin Creek Equity Partners, LLC (Basin), including advance approval of the NWE/Basin agreement. NWE acknowledged in its application that the filing is technically not controlled by § 69-8-421, MCA (the advance approval statute), but asked the Commission to process the filing pursuant to that section, and on an expedited schedule. The Commission asked for comments on that request in its Notice of Application (issued March 26, 2004). No comments were submitted. Therefore, the Commission finds that processing the filing pursuant to § 69-8-421, MCA, and on a relatively fast schedule, is appropriate. NWE is correct, however, that § 69-8-421, MCA, does not control this filing, and the Commission will modify the schedule and deviate from the requirements of that section if it is in the public interest to do so.

Schedule

2. The following schedule applies to this docket.

<u>Action</u>	<u>Deadline (Receipt Dates)</u>
Discovery on NWE	April 27 – May 14, 2004
Responses from NWE	Seven days after Receipt (or by May 4, 2004 for discovery received before April 27, 2004)
Final Day for NWE Responses	May 21, 2004
Intervenor Testimony	June 8, 2004
Discovery on Intervenor	June 15, 2004
Intervenor Responses	June 22, 2004
Rebuttal Testimony	June 29, 2004
Pre-hearing Memorandum	July 7, 2004
Hearing	July 14, 2004

3. Following the receipt of intervenor testimony on June 8, 2004 Commission staff will confer with the parties and consider whether the hearing date can be advanced.

Ex Parte Communications

4. This is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited by Montana law. An *ex parte* communications is one between a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. PSC Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). Id. Any oral, written, electronic, or other form of communication of any kind, between a PSC Commissioner and any person associated with any party to a contested case pending before the PSC may be or may include, inadvertently or otherwise, a prohibited *ex parte* communications at

the Commission attaches at the time of notice filing. ARM 38.2.3905(1). A notice of filing has been issued in this docket.

Procedure

General

5. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the PSC' (d) tariffed procedures; and (e) previous Orders of the PSC bearing specifically on the procedure and issues in this docket, if any.

Service and Filing

6. Copies of all pleadings, motions, discovery requests, discovery responses, prefiled testimony, and briefs shall be filed with the PSC and served on all parties ("parties" includes the utility and all intervenors). In the case of a filing directed to the PSC, such as motions, testimony, and briefs, the original and 10 copies shall be filed. Service upon the parties shall be upon each party's attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery requests and discovery responses to the PSC and parties specifically requesting service. After notice to all parties, parties may limit service of discovery to parties specifically requesting it.

7. Service by the deadlines at paragraph 2 means physical receipt at the PSC of the requisite copies. PSC staff may extend deadlines only on a representation by a requesting party that all other parties have been contacted and do not object to the extension. However, staff is not required to grant deadline extensions. Parties may arrange among themselves for electronic service on parties, in lieu of, or in addition to hard copy service. However, hard copy service must be granted if requested.

Intervention

8. Parties seeking to intervene must file a Petition to Intervene with the PSC. So

long as the time set for intervention as a matter of right is met, intervention shall be deemed granted subject to a later ruling on standing (if necessary). In the case of late intervention, the intervenor must: (a) identify the general position that the intervenor will take if the intervention is granted; (b) demonstrate a legally protectable interest directly affected by this docket; (c) demonstrate that the intervention, if granted, will not delay or prejudice the proceeding in this docket; and (d) good cause why the request for intervention was not timely filed. Late intervention will be effective only upon action of the PSC. The deadline for timely intervention in this docket has passed.

The Montana Consumer Counsel, Renewable Northwest Project, National Resources Defense Council and PPL Montana filed timely requests to intervene and are granted intervention. However, NWE has challenged the intervention of PPL Montana. PPL Montana has responded and the Commission will rule at a later date.

Discovery

9. The term "discovery" includes all forms of discovery authorized by rules of the PSC. The term "written discovery" as used in this order includes data requests. The PSC urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

10. The PSC directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MCC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to the utility, PSC-009 through 016 to an intervenor, and PSC-017 through 019 to the utility). Data requests issued in Docket No. D97.7.90 must continue the numbering from earlier proceedings in that docket (i.e., if the last data request in the docket from MCC was MCC-146, the next, pursuant to this order, will be MCC-147.)

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help

to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another. In addition, because this order covers discovery for more than one filing and docket, each data request must indicate the docket number(s) to which it pertains.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts

Witness - Doe, Page JBD-4, Lines 13-15.

Docket No. _____

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass

Witness - Roe, Page RAR-14, Lines 11-14.

Docket No. _____

- a. What risks of bypass would be avoided by the shareholders as a result of the company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the company's proposed treatment?

11. The party receiving the written discovery or data request has three business day from receipt to object. The objection, which must include sufficient explanation, argument and reference, shall be served electronically on the PSC and on all parties. A response to the objection must be served electronically within three business days of receiving the objection. The Commission will dispose of objections by prompt ruling. Failure to timely object or respond will be deemed acceptance of the request or objection.

12. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must, within three days after receipt of such response, file electronically with the PSC and all parties the objection or motion (with explanation and argument) and identify the relief requested. Responses must be similarly served

within three business days of receipt. The Commission will dispose of such objection by prompt ruling. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

13. Submission of written discovery after the period established will be allowed by leave of the PSC only. Requests will not be permitted unless the party making the request shows good cause why the request was not submitted within the time period allowed.

14. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding, or parts thereof.

15. To maintain this schedule, it is important that discovery questions be clear and that answers be thorough. The Commission strongly encourages the parties (employees and consultant experts) to communicate informally if necessary to clarify questions or answers. This should avoid many discovery disputes.

Testimony and Evidence

16. The PSC contemplates a complete identification of issues prior to the time of hearing. Introduction of new issues or data in new areas at the time of hearing will be carefully scrutinized and will be subject to disallowance unless reasonably related to issues earlier identified in the application, prefiled testimony, or proceedings.

17. At hearing, prefiled direct, answer, and rebuttal testimony (if any, and including on additional issues) will be adopted into the record by motion of the proponent without the need of recitation by the witness. The testimony will be an exhibit and not otherwise entered into the transcript.

18. All proposed exhibits and prefiled written testimony shall be marked for the purposes of identification prior to the start of the hearing. The PSC prefers that exhibits be

identified sequentially by the name or abbreviation of each party. For example: “MCC 1,” “MCC 2,” “NWE 1,” “NWE 2,” etc.

19. When cross-examination is based on a document, not previously filed with the PSC, copies of the document must be made available to each commissioner, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

20. Parties may be permitted to present live rebuttal testimony only if it is in direct response to an issue raised for the first time in cross-examination or the testimony of a public witness. Such testimony will be allowed only by leave of the PSC or presiding officer.

21. Citizens and citizen groups will, at the discretion of the PSC, be allowed to make statements without having submitted prepared written testimony. In addition, if they have prepared written testimony they may read it if they desire, or they may have it adopted directly into the record.

22. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

23. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the PSC, shall have all persons authoring each response present and available as a witness at the hearing for the purposes of introduction of the discovery and cross-examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the PSC. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to

cross-examination or upon stipulation approved by the PSC. All responses to PSC data requests may be introduced into evidence at the hearing.

Prehearing Motions and Conferences

24. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this docket, shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs.

25. The PSC may, at any time prior to the hearing, set a prehearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

26. Nothing in this Order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of the utility at any time.

Prehearing Memorandum

27. The requirements of the Prehearing Memoranda will be described at a later date through an addendum to this Order.

Open Meetings

28. All PSC meetings regarding this docket are open meetings except as otherwise required or permitted by law. Parties will not routinely be notified of PSC business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of PSC work sessions concerning this docket will be provided to all persons requesting notification through the PSC's weekly agenda mailing list.

Done and dated this 27th day of April, 2004 by delegation to PSC staff as an Order of the PSC.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman
TOM SCHNEIDER, Vice Chairman
MATT BRAINARD, Commissioner
GREG JERGESON, Commissioner
JAY STOVALL, Commissioner

NOTE: Normal reconsideration of this order is not permitted, and the Commission rules on reconsideration do not apply. However, requests to modify this order may be made by motion at any time.